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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,196	04/05/2001	Edwin S. Flores	1861-1001	5382
7590		11/26/2003	EXAMINER	
Edwin S. Flores		SZEKELY, PETER A		
CHALKER & FLORES, LLP		ART UNIT		PAPER NUMBER
12700 Park Central		1714		
Suite 455		DATE MAILED: 11/26/2003		
Dallas, TX 75251				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/827,196

Applicant(s)

FLORES, EDWIN S.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 23-44 are rejected under 35 U.S.C. 102(a or b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Szukiewicz 2,902,388, Stark et al. 5,021,537 or Toray Ind. JP—9-302239, in view of Ikemoto et al. 5,932,344.
3. Szukiewicz discloses a blend of hydraulic cement with a polyisocyanate adduct of a polymer and hydraulic cement in claims 1-9. Portland cement is shown in claims 4, 9 and 15. The method of bonding the composition to cement is disclosed in claims 10-15. Filling cracks is demonstrated in Example 4. For catalysts see column 3, lines 18-23. Stark et al. teach polyglycidyl ether and polyacetoacetate in claim 1, fillers among them Portland cement in column 4, lines 7-8 and two-container system in column 4, lines 19-27. Toray Ind. recites a cement containing resin composition in which moisture hardening type resin and cement are contained (claim 1). The resin is moisture hardening type polyurethane i.e. an isocyanate terminated polyurethane (claim 2). The cement is Portland cement (claim 5). The composition contains 70-30 parts of cement and 30-70 parts of resin (claim 6). The material can be used to repair defects in the concrete (paragraph 0017). Cracks are surface defects. Micro aggregates can be added (paragraph 0014). Ikemoto et al. present Portland cement in the paragraph overlapping columns 17 and 18 and conventional cement additives (retarder, stabilizer, rheological agent, coloring agent and plasticizer) in the Abstract, column 9, lines 56-64

and column 18, lines 15-22. Applicants' claims are not novel. In the alternative, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the conventional cement additives of Ikemoto et al. to the cement compositions of the primary references, and to separate the reactive components in different containers as suggested by Stark et al.

### ***Response to Arguments***

4. Applicant's arguments filed 10/7/03 have been fully considered but they are not persuasive. Toray Ind. displays a blend of cement and moisture curable polymer in the claims. The blend is used to repair surface defects. Cracks are surface defects. Grout is the intended use and as such it has no patentable significance. Applicant did not prove that the compositions of the cited references couldn't be used as a grout compound.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
11/3/03